

2003

# American Fork City v. Larry J. Singleton : Brief of Appellant

Utah Court of Appeals

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**IN THE UTAH COURT OF APPEALS**

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AMERICAN FORK CITY, :  
Plaintiff/Appellee : No. 20030530-CA  
VS. :  
LARRY J. SINGLETON :  
Defendant/Appellant :

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**BRIEF OF APPELLANT**

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Appeal from the Fourth Judicial District Court  
of Utah County, State of Utah  
Honorable Howard H. Maetani, Presiding

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**FILED**  
Utah Court of Appeals

AUG 27 2003

Paulette Stagg  
Clerk of the Court

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## **ADDENDUM**

### **A. Statutes not reproduced verbatim in the brief:**

Utah Code Annotated 78-2a-3(2)(e)&(j)  
City Traffic Code 41-6-44

### **B. Parts of record on appeal of central importance**

1. Information filed February 16, 2000.
2. Motion to Suppress dated March 9, 2000
3. Statement of Points and Authorities dated March 9, 2000
4. Ruling on Motion dated June 14, 2000
5. Entry of Plea reserving right of Appellate Review dated January 24, 2001
6. Judgment and sentence dated August 1, 2001
7. Notice of Appeal dated August 2, 2001
8. Notice of appeal dated June 5, 2003.

## STATEMENT OF JURISDICTION

This court has jurisdiction over this matter pursuant to Utah Code Annotated §78-2a-3(2)

## STATEMENT OF THE ISSUES AND APPROPRIATE STANDARDS OF REVIEW

1. WHETHER THE ARREST OF THE APPELLANT WAS LAWFUL.
2. WHETHER EVIDENCE OBTAINED INCIDENT TO OR AS A RESULT OF THE ARREST OF THE APPELLANT SHOULD BE SUPPRESSED.

Standard of Review: The standard of appellate review for the issues is for correctness with no particular deference given to the decision of the district court. *Landes v. Capital City Bank*, 795 P.2d 1127, at 1129, (Utah 1990).

These issues were preserved in the trial court by the entry of a conditional plea of guilty under Rule 11(i) of the Utah Rules of Criminal procedure which provides that:

**“With the approval of the court and the consent of the prosecution, a defendant may enter a conditional plea of guilty--or no contest, reserving in the record the right, on appeal from the judgment to a review of the adverse determination of any specific pre-trial motion. A defendant who prevails shall be allowed to withdraw the plea.”**

The issues were further preserved under the authority of *State v Sery*, 758 P.2d 935 (Ut Ct. App.,1988) (conditional plea agreement, record p.112)

## DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

§41-6-44(11) Utah Code Annotated provides:

**“a peace officer may without a warrant arrest a person for violation of this section when the officer has probable cause to believe the violation has occurred although not in his presence, and if the officer has probable cause to believe that the violation was committed by the person.”**

**§77-7-2. Arrest by peace officers.**

**“ A peace officer may make an arrest under authority of a warrant or may, without a warrant, arrest a person:**

- (1) for any public offense committed or attempted in the presence of any peace officer--;**
- (3) when he has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:**
  - (a) flee or conceal himself to avoid arrest;**
  - (b) destroy or conceal evidence of the commission of the offense; --**

**§76-8-306. Obstruction of justice--Elements--Penalties--Exceptions.**

**(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:**

- (a) provides any person with a weapon;**
- (b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;**
- (c) alters, destroys, conceals, or removes any item or other thing;**
- (d) makes, presents, or uses any item or thing known by the actor to be false;**
- (e) harbors or conceals a person;**
- (f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;**
- (g) warns any person of impending discovery or apprehension;**
- (h) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or**
- (i) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.**

**STATEMENT OF THE CASE**

**Nature of the case:**

This is an appeal from a final judgment of the Fourth Judicial District Court of Utah County entered by the Honorable Howard H. Maetani on August 1, 2001. It is a criminal action in

which the Defendant is charged with a violation of Section 41-6-44 of the Ordinances of American Fork City. The Information was filed February 16, 2000 (record p. 5).

**Course of Proceedings:** To the charges contained in the information the Defendant initially entered a plea of not guilty (record p. 4). On March 13, 2000 he filed a motion to suppress evidence obtained while in custody following his arrest. (record p. 16). It was supported by a Memorandum of Points and Authorities (record p.26).

**Disposition in the Court below:** A hearing was held and oral arguments presented on May 3, 2000. (record p. 44) On June 28, 2000 the motion was denied.(record p.81). On January 24, 2001 the Defendant entered a conditional plea of guilty to the charges contained in the information. With the approval of the prosecutor and the Court, the issues raised by his motion to suppress were reserved for review on appeal. (record p.110). Final judgment and sentence was entered August 1, 2001. (record p. 134) A certificate of probable cause was issued on that date.(record p.136). Notice of appeal was filed on August 2, 2001.(record p. 142).The case was remanded to the trial Court for the entry of Findings of Fact and Conclusions of law.(record 169,173). Notice that those were made and entered was filed on May 6,2003. (record p.196). This Appeal was filed on June 5,2003. (record p. 198.)

**Statement of facts relevant to the issues:** The Court made and entered the following findings of fact relevant to the issues before this Court: (Record p. 192)

1. On January 30,2000, Officers Lisa Shelby and Keith Southard of the American Fork Police Department were called to assist the Lehi Police Department on a custodial interference complaint.



2. The Lehi Police Department reported that two individuals, Gina Singleton and Defendant Larry Singleton, had taken the 18-month old daughter of Jamie Boren and were driving to American Fork.
3. The report from the Lehi Police also stated that both of the individuals in the vehicle were intoxicated and provided a description of the vehicle they were driving.
4. Officer Shelby located a truck that fit the description provided and followed the truck until it stopped at 403 West 300 South in American Fork.
5. After the vehicle stopped, the individual on the passenger side exited the vehicle. Officer Shelby made contact with this individual and informed her as to why she was there. The passenger, who was identified as Gina Singleton, told Officer Shelby that she did have her granddaughter.
6. Officer Shelby then made contact with the Defendant who was exiting the driver's seat of the vehicle. Officer Shelby immediately detected the odor of alcohol emanating from the Defendant.
7. Officer Shelby then went back to speak with Ms. Singleton. At this time, Officer Southard arrived on the scene and asked Officer Shelby what he could do to assist. Officer Shelby told Officer Southard to make contact with the driver, who had been reported to Officer Southard by dispatch as being intoxicated.
8. He went to make contact with the driver of the vehicle and observed two men on the sidewalk that leads to the front door. He approached the younger of the two men first and asked if he was the driver of the vehicle. The young man then pointed to the Defendant and said "it wasn't me, it was him."
9. Officer Southard then contacted the Defendant and asked if he had driven the

truck. Later Officer Shelby indicated to Officer Southard that the Defendant was the person she had observed driving the vehicle.

10. When Officer Southard contacted the Defendant, he noticed that the Defendant's breath had a strong odor of alcohol and that the Defendant's eyes were glassy and bloodshot. He also observed that the Defendant's upper body was swaying.

11. Officer Southard told the Defendant that he thought the Defendant had been drinking. The Defendant responded by stating, "no you don't, because I haven't had a damn thing to drink."

12. Officer Southard then told the Defendant that he would like him to perform field sobriety tests. The Defendant would start to perform the test and then would become uncooperative.

13. The Defendant and his wife then invited the officers into their home to get the baby out of the cold weather. The officers accepted this invitation.

14. Once inside the house, Officer Southard resumed his field sobriety tests with the Defendant. Officer Southard held out his pen and asked the Defendant to touch the top of the pen with his index finger. The Defendant reached out and touched the pen with his middle finger, but he had a difficult time doing so.

15. Officer Southard then tried to complete the test by having the Defendant follow the pen with his eyes only. Yet, the Defendant refused to comply with the instruction and just glared at Officer Southard.

16. The Defendant then told the officers to get out of his house. Officer Southard responded by stating that the Defendant had invited them into his home.

17. Officer Southard stated that he believed the Defendant was DUI and that he

needed to continue the field sobriety tests to determine the Defendant's status.

18. The Defendant became more uncooperative and stated that the officers needed to leave his house. Officer Southard told the Defendant that he was going to arrest him for DUI or he was going to arrest him for obstructing justice for not complying with the field sobriety tests.

19. The Defendant walked past Officer Southard and stated that it was "bullshit." Officer Southard then grabbed the Defendant and placed him in custody.

20. Eventually, the Defendant was taken to the police station where he was given a breath test. The results of that test showed that the Defendant had ~~b~~reath alcohol content of .249.

### ARGUMENT SUMMARY

1. Refusal to submit to a field sobriety test does not constitute the offense of obstructing justice. Commission of that crime involves affirmative action with a specific intent to hinder, delay or prevent. It does not include benign refusal to assist in building probable cause. It does not fit the defendant's conduct here.

2. At the time the defendant was placed under arrest he was not engaged in the commission of any crime, nor was there probable cause to believe that he had committed a crime for which a lawful arrest for anything could be justified. The arresting officer was investigating a possible violation of the traffic rules against driving while under the influence of alcohol. He was looking for probable cause to support a lawful arrest for that offense. An arrest for obstruction of justice was an inappropriate means to attempt to achieve that end no matter how well intended it may have been.

3. Evidence obtained incident to or resulting from the unlawful arrest of the defendant should be suppressed. This position is supported by case law out of this Court. It is the only logical remedy available to an aggrieved suspect in a criminal investigation of the type we are dealing with here. To hold otherwise creates a dangerous precedence.

### ARGUMENT

**POINT 1: REFUSAL TO SUBMIT TO FIELD SOBRIETY TESTS DOES NOT CONSTITUTE THE OFFENSE OF OBSTRUCTION OF JUSTICE.**

The Defendant refused to submit to field sobriety tests. He was warned that to continue to do so was an obstruction of justice. It is not. No law requires him to do so. Violation of the obstruction of justice statute in Utah requires affirmative action with a specific intent to hinder, delay or prevent the occurrence of specific events outlined in the statute. It does not include a person's refusal to do anything but remain silent and motionless when instructed to engage in conduct the sole purpose of which is to incriminate him by building probable cause to justify his arrest. As will more fully appear in the development of points 2 and 3, the defendant's conduct does not fit the crime.

**POINT 2: AT THE TIME THE DEFENDANT WAS PLACED UNDER ARREST HE WAS NOT ENGAGED IN THE COMMISSION OF ANY CRIME, NOR WAS THERE PROBABLE CAUSE TO BELIEVE THAT HE HAD COMMITTED A CRIME FOR WHICH A LAWFUL ARREST FOR ANYTHING COULD BE MADE**

The gravamen of the crime of obstructing justice is that the defendant performs an affirmative act to prevent or hinder the prosecution, conviction, or punishment of someone. The statute is not applicable to the defendant in this action. Clearly, the offense of obstructing justice was not being committed by the defendant when he refused Officer Southward's request for the performance of field sobriety tests. He was impeding the officer's ability to establish probable cause to legitimize his arrest for driving under the influence of alcohol. Such conduct is not a criminal act.

If we conclude as a matter of law that there was no probable cause to effect an arrest of the defendant for the offense of obstructing justice, it still remains to be determined whether or not there was probable cause to arrest him for any offense either being committed in the presence of the officer or for which he had probable cause. The officer's testimony on direct examination at

the suppression hearing as it relates to the arrest that was made by him played out as follows: (May 3, 2000; hearing transcript pp.16-20)

Q: "On the evening of that day (January 30, 2000) approximately 9:00 p.m. you responded to 400 West 300 South, American Fork City.

A: Yes, I did.

Q: What was the reason for your going to that location?

A: We had received a dispatch on a custodial interference assist for Lehi Police Department. Officer Shelby had made contact with the suspect vehicle and suspects. I responded to her location to offer assistance as a back up officer.

Q: What did you do when you arrived at that location?

A: When I arrived, I observed Officer Shelby dealing with Gina Singleton. I came up from behind her and asked her what she needed me to do to assist her in this call. She indicated that she wanted me to make contact with the driver who I knew from the dispatch report was intoxicated, or reported as intoxicated. I went to make contact with the driver of the vehicle.

Q: Was it the defendant, Larry Singleton?

A: There was two people I observed in the immediate area of the sidewalk that leads to the front door. There was a young gentleman wearing a light blue shirt. I believe his name was Josh Singleton, the son. I approached him first and said, "Were you the driver of the vehicle?" He pointed towards his dad and said, "It wasn't me, it was him." And so I in turn made contact with Larry Singleton, who is the defendant sitting here.

Q: Then what happened?

A: I approached Larry and I asked him if he had driven the truck. Larry indicated he had driven the truck, and Officer Shelby later indicated to me that she had seen him driving, then exit the vehicle. I advised Larry that I could detect a strong odor of alcohol coming from his breath. I noticed that he had glassy, bloodshot eyes. And that while he was talking to me he was slightly swaying, his body would sway back and forth. I told him that I thought he had been drinking. His response was, "No, you don't, because I haven't had a damn thing to drink." I told him I have dealt with this enough to know what an intoxicated person looks and smells like and I believe he had.

Q: Then what happened?

A: We went back and forth over this. I told him I wanted to do a field sobriety test. He would start to do the field sobriety test, and then he would become uncooperative and wouldn't perform the test for me. He tried to explain to me what the situation was with their granddaughter and daughter in Lehi. And then I says, "Look, it's cold out here. Why don't we go inside?" We all proceeded inside because it was cold.

Q: Whose suggestion was that?

A: This was Larry's.

Q: Okay, then what happened?

A: I advised Officer Shelby, "Why don't we take everybody inside where it is warm." ... Once again I explained to Larry that I wanted to conduct a field sobriety test. ... Once again I returned to my field sobriety tests with Mr. Singleton. I asked Mr. Singleton if he could see the top of my pen. I told him with which ever index finger he felt the most comfort with, to reach out and touch the top of my pen. He reached out with his middle finger and touched it with his middle finger and had a difficult time doing that. I would explain to him that what I wanted him to do was to follow the pen, not to move his head.

Q: What, with his eyes?

A: Follow with his eyes only.

Q: Okay.

A: He indicated that he understood the instructions. I would attempt to move the pen, and he would just glare at me angrily. And I says "Okay, let's try this again. You need to follow with your eyes," and repeated the instructions. We tried that three or four times. He then explained to me, "You have no right to be in my house. You don't have a warrant. Get out of my house." And I says, "Well, you invited us in here. I believe that you are DUI. I need to conduct these field sobriety tests to further determine your status." And he became uncooperative, and says, "No, you need to get out of my house." I told him he had his choice as to that. I was going to arrest him for DUI or that he was obstructing justice by not complying with my request for a field sobriety. I told him that I would arrest him for that, and that he could take care of the matter down at the police department.

Q: And then what happened?

A: At that point in time, he walked past me and told me that it was "You know, bullshit." As he walked past me, I grabbed hold of his wrists and placed him in custody. He was then placed in my patrol car and taken to the police department.

Q: Where you performed the field sobriety tests and intoxilyzer test?

A: Once again, he was uncooperative. I explained to him that, you know, I understand this situation. It was tense with his granddaughter. There was some other issues there that they were worried about protecting their granddaughter. I says, "You need to deal with this." I told him that if he would deal with the field sobriety tests, instead of him going to jail, that if he qualified he would be released to a responsible person. Instead of taking him to jail that night, I would release him to somebody else. He then cooperated with the field sobriety tests at that point in time."

It is apparent that the officer, in essence, observed the strong odor of alcohol on someone he had reasonable cause to believe had been driving, and he observed red, glassy eyes and a slight swaying motion. This would be sufficient evidence to stop and detain and to make further inquiry. The officer did that. When that further inquiry produced nothing in the way of field sobriety tests, however, he initiated the arrest. That action was premature.

The only probable cause for effecting a valid arrest came as a result of field sobriety tests that were performed at the police station after the original arrest had been effected. Again, citing the transcript (at page 26):

Q: "Okay, then after you took him into custody, took him to the police station, and he was under arrest for obstructing justice, that's when you proceeded to perform a coordination test again, right?

A: Yes, obstructing justice for not initially taking the field sobriety test.

Q: Right. And so at the police station he proceeded, under arrest, to cooperate with you. He did the horizontal gaze and your (inaudible) test. And he had ... or attempted the heel-to-toe test, right?



A: Yes.

Q: And at that point in time, you changed it and charged him ... you told him he was under the arrest for DUI. And that's when you told him about the intoxilyzer test you wanted him to take, right?

A: Okay, help me understand your question there. Are you saying that I dropped the obstruction of justice and went with the DUI?

Q: No, no. I didn't say that you dropped the obstruction of justice charge. I am saying that at that point after he failed his field sobriety test at the police station according to the report on page 8, that's when you told him: "You are under arrest for DUI, and I am requesting that you take the intoxilyzer test." Is that correct?

A: That's the continuing portion of the DUI protocol. Yes."

The criteria for establishing probable cause to arrest in a case of this kind has been summarized by this Court in the case of Layton City vs. Noon, 736 P.2d 1035 (1987) with this language:

"In determining whether Officer Robinette had probable cause to arrest Noon for driving under the influence of alcohol we must ask whether from the facts known to the officer and the inferences which fairly might be drawn therefrom a reasonable and prudent person in his position would be justified in believing that the suspect had committed the offense."

In that case the Court found the requisite probable cause based upon the officer's observations that the defendant smelled heavily of alcohol; the officer had the defendant blow into the officer's hand to determine the source of the alcohol smell; the defendant could not complete an accurate recitation of the alphabet A through Z as requested; the defendant attempted to stand with both legs together and then raise either foot six inches off the ground and hold it there; the defendant fell backwards almost as soon as he lifted his foot, and the officer caught him in mid fall. These were all pre-arrest observations. After reciting these facts the Court made the following statement:

“Applying this standard to Officer Robinette’s knowledge at the time of Noon’s arrest, we are convinced that Robinette reasonably believed Noon had committed the offense of driving under the influence of alcohol.”

The Court noted that the mere fact that the officer had not seen the defendant actually driving the vehicle was not fatal to the existence of probable cause and we make no such claim in the case at bar.

American Fork City police officer Southard, in his initial report (Defendant’s exhibit I, record p. 48) made the following observations and statements about his initial contact with the Defendant.

**“I approached Larry SINGLETON and asked him if he had driven the truck. Larry indicated that he was the driver of the truck. Officer SHELBY later indicated to me that Larry was the person she observed driving the truck---. I advised Larry that I could detect a very strong odor of alcohol coming from his mouth.---**

**“I advised Larry that I was going to conduct some field sobriety tests. Larry asked if we could all go inside the house because it was very cold and he wanted to get his granddaughter inside. We all went into the house.**

### **“3. ATTEMPTED FIELD SOBRIETY TESTS;**

**“Officer SHELBY was in the living room dealing with Gina and I entered the kitchen trying to get Larry to quit avoiding me and comply with the test I was requesting of him. Larry finally stood in front of me and I gave instructions for the Horizontal Gaze Nystagmus test. Larry touched the top of the pen as requested with the wrong finger. (Middle finger instead of index finger). Larry was supposed to follow the pen with his eyes, but only glared at me with an angry look. I re-advised him of the instructions and started the test again. Once again he refused to follow the pens movements and glared at me.**

**“Larry then told me I had no right to be in his home without a warrant and for me to get out of his house. I told Larry he had to comply with my test request or I would be forced to arrest him for obstructing justice.---**

**“I again turned my attention back to Larry and asked him if he was going to take the test or be arrested for obstructing justice. Larry responded with**

**“F\_\_you, we are just trying to save this baby and all you can do is make more trouble.” I asked my question again and Larry said that I wasn’t going to be arresting anyone. He walked past me into the living room/hallway and I grabbed his hand and got him into a wrist lock. I advised him that he was under arrest for obstruction of justice and he started to resist. Officer SHELBY had to assist me by applying a wrist lock to the other hand. Larry was placed into handcuffs without any further resistance.**

#### **4. FINAL FIELD SOBRIETY TEST;**

**“I transported Larry to the police department and offered him another chance at the field sobriety test. He took the requested test and did poorly on all tests.**

#### **5. INTOXILYZER TEST RESULTS;**

**“Larry took a breath test and the result was .249. The intoxilyzer result and operational checklist were placed into evidence.”**

Applying the Noon case criteria to the facts of this case shows that from the facts known to the Officer and the inferences which fairly might be drawn therefrom, a reasonable and prudent person in his position would conclude that the situation needed further investigation but not an arrest. The Defendant could have been detained without arrest while inquiry was made as to what caused the police to be called in the first place. The officer doesn’t disclose any exigent circumstances that would lead a reasonable and prudent person to conclude that immediate arrest under the circumstances was necessary. We must therefore conclude that there were none that could be articulated, only that it was the convenient thing to do – a shortcut, if you will, to where the officer wanted to go.

**POINT 3: EVIDENCE OBTAINED INCIDENT TO OR RESULTING FROM THE ARREST OF THE DEFENDANT IS INADMISSIBLE**

In State v. Mendoza, 748 P.2d 181, (Utah 1987), the Court held, in essence, that where an arrest is illegal, evidence obtained as a result thereof is inadmissible. This position was supported also in State v. Larocco, 794 P.2d 460, (Utah 1990). In that case the court made it clear that the appropriate sanction for illegally obtained evidence is exclusion. If this were a case of harmless inadvertence on the part of the arresting officer, that is arguably another matter. The record, including the officer's initial report, (record p. 53), clearly indicates that this was not the case. Arresting the defendant was a deliberate act intended to place him in a position of custody to which he should not have been subjected. Probable cause as the Noon case defines it was not there.


### **CONCLUSIONS**

The offense of obstructing justice did not occur. At the time of the Defendant's arrest at his home there was not sufficient evidence to establish probable cause to believe that any offense had been committed. That evidence came only after the initial arrest. It should be inadmissible. The defendant's motion to suppress that evidence should have been granted, and it was not. This Court is requested to enter its order directing that the order of the trial Court dated June 28, 2000 (record p. 81) and the minute entry ruling entered June 14, 2000 (record p. 78) denying the Defendant's motion to suppress be reversed.

To do otherwise creates a dangerous precedence. It encourages law enforcement officers to take short cuts to establish probable cause by intimidation tactics. Or at best to arrest on marginal probable cause where a little more investigation or inquiry might more clearly establish its existence. It would at least put the investigator in a position to establish that everything that could have been done to build strong probable cause had in fact at least been attempted. That is the

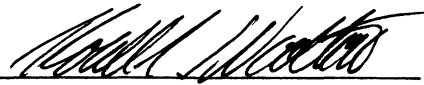
criteria by which good police work should be measured. For the Court to take that position goes a long way toward fostering professionalism in law enforcement.

Respectfully submitted August ~~26~~<sup>27</sup>, 2003

  
\_\_\_\_\_  
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A copy of this document is mailed to James Tucker Hansen, Attorney for Plaintiff/Respondent August ~~26~~<sup>27</sup>, 2003 first class postage prepaid at American Fork, Utah to the following address:

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NOALL T. WOOTTON  
Attorney for Defendant/Appellant

## **ADDENDUM A**

**Statutes not reproduced**

**verbatim in the brief**

(3) The judges of the Court of Appeals shall elect a presiding judge from among the members of the court by majority vote of all judges. The term of office of the presiding judge is two years and until a successor is elected. A presiding judge of the Court of Appeals may serve in that office no more than two successive terms. The Court of Appeals may by rule provide for an acting presiding judge to serve in the absence or incapacity of the presiding judge.

(4) The presiding judge may be removed from the office of presiding judge by majority vote of all judges of the Court of Appeals. In addition to the duties of a judge of the Court of Appeals, the presiding judge shall:

- (a) administer the rotation and scheduling of panels;
- (b) act as liaison with the Supreme Court;
- (c) call and preside over the meetings of the Court of Appeals; and
- (d) carry out duties prescribed by the Supreme Court and the Judicial Council.

(5) Filing fees for the Court of Appeals are the same as for the Supreme Court.

**History:** C. 1953, 78-2a-2, enacted by L. 1986, ch. 47, § 45; 1988, ch. 248, § 7.

#### NOTES TO DECISIONS

**Stare decisis.**

A rule of law pronounced by a panel of the Court of Appeals governs all later cases involving the same legal issues decided by other

panels of that court and all courts of lower rank. *Renn v. Utah State Bd. of Pardons*, 904 P.2d 677 (Utah 1995).

### **78-2a-3. Court of Appeals jurisdiction.**

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

- (a) to carry into effect its judgments, orders, and decrees; or
- (b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

- (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and
- (ii) a challenge to agency action under Section 63-46a-12.1;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction of a first degree or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence,

except petitions constituting a challenge to a conviction of or the sentence for a first degree or capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

**History:** C. 1953, 78-2a-3, enacted by L. 1986, ch. 47, § 46; 1987, ch. 161, § 304; 1988, ch. 73, § 1; 1988, ch. 210, § 141; 1988, ch. 248, § 8; 1990, ch. 80, § 5; 1990, ch. 224, § 3; 1991, ch. 268, § 22; 1992, ch. 127, § 12; 1994, ch. 13, § 45; 1995, ch. 299, § 47; 1996, ch. 159, § 19; 1996, ch. 198, § 49.

**Amendment Notes.** — The 1992 amendment, effective April 27, 1992, added Subsection (2)(h) and redesignated former Subsections (2)(h) through (j) as Subsections (2)(i) through (k).

The 1994 amendment, effective May 2, 1994, substituted "Board of Pardons and Parole" for "Board of Pardons" in Subsection (2)(h) and inserted "Administrative Procedures Act" in Subsection (4).

The 1995 amendment, effective May 1, 1995, substituted "School and Institutional Trust

Lands Board of Trustees, Division of Sovereign Lands and Forestry actions reviewed by the executive director of the Department of Natural Resources" for "Board of State Lands" in Subsection (2)(a).

The 1996 amendment by ch. 159, effective July 1, 1996, substituted "Division of Forestry, Fire and State Lands" for "Division of Sovereign Lands and Forestry" in Subsection (2)(a).

The 1996 amendment by ch. 198, effective July 1, 1996, deleted former Subsection (2)(d), listing appeals from circuit courts, and redesignated former Subsections (2)(e) to (2)(k) as (2)(d) to (2)(j).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

**Cross-References.** — Composition and jurisdiction of military court, §§ 39-6-15, 39-6-16.

## NOTES TO DECISIONS

### ANALYSIS

Decisions of Board of Pardons.

Extraordinary writs.

Final order.

Habeas corpus proceedings.

Post-conviction review.

Scope.

— Sentence reduction.

Cited.

### Decisions of Board of Pardons.

The Court of Appeals hears appeals from orders on petitions for extraordinary writs challenging decisions of the Board of Pardons, except when the petition additionally challenges the conviction of or sentence for a first degree felony or a capital felony. Then the appeal is to be heard by the Supreme Court. *Preece v. House*, 886 P.2d 508 (Utah 1994).

### Extraordinary writs.

The Court of Appeals had jurisdiction over a petition for a writ of mandamus directed against a judge of the district court based on its authority under this section to enforce compliance with a prior order and to issue writs in aid of its appellate jurisdiction. *Barnard v. Murphy*, 882 P.2d 679 (Utah Ct. App. 1994).

The term "original" in § 78-2-2(2) adds nothing to the Supreme Court's writ jurisdiction — and its absence in Subsection (1) takes nothing from the jurisdiction of the Court of Appeals — because jurisdiction over petitions for extraordinary writs necessarily invokes a court's jurisdiction to consider a petition originally filed with it as opposed to its appellate jurisdiction over cases that originated elsewhere. *Barnard v. Murphy*, 882 P.2d 679 (Utah Ct. App. 1994).

Because, under this section, the Court of



## **41-6-43.10. Repealed.**

**Repeals.** — Section 41-6-43.10 (L. 1955, ch. 71, § 1; 1957, ch. 78, § 2; 1983, ch. 99, § 12), relating to negligent homicide, was repealed by Laws 1985 (1st S.S.), ch. 1, § 2.

## **41-6-44. Driving under the influence of alcohol, drugs, or with specified or unsafe blood alcohol concentration — Measurement of blood or breath alcohol — Criminal punishment — Arrest without warrant — Penalties — Suspension or revocation of license.**

- (1) As used in this section:
  - (a) “prior conviction” means any conviction for a violation of:
    - (i) this section;
    - (ii) alcohol-related reckless driving under Subsections (9) and (10);
    - (iii) local ordinances similar to this section or alcohol-related reckless driving adopted in compliance with Section 41-6-43;
    - (iv) automobile homicide under Section 76-5-207; or
    - (v) statutes or ordinances in effect in any other state, the United States, or any district, possession, or territory of the United States which would constitute a violation of this section or alcohol-related reckless driving if committed in this state, including punishments administered under 10 U.S.C. Sec. 815;
  - (b) “serious bodily injury” means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death;
  - (c) a violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6-43; and
  - (d) the standard of negligence is that of simple negligence, the failure to exercise that degree of care that an ordinarily reasonable and prudent person exercises under like or similar circumstances.
- (2) (a) A person may not operate or be in actual physical control of a vehicle within this state if the person:
  - (i) has a blood or breath alcohol concentration of .08 grams or greater as shown by a chemical test given within two hours after the alleged operation or physical control; or
  - (ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle.
- (b) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense against any charge of violating this section.
- (c) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.
- (3) (a) A person convicted the first or second time of a violation of Subsection (2) is guilty of a:
  - (i) class B misdemeanor; or

# **ADDENDUM B**

**Parts of record on appeal  
of central importance**

8

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH

UTAH COUNTY, AMERICAN FORK DEPARTMENT

AMERICAN FORK CITY,  
A Municipal Corporation,

Plaintiff,

vs.

SINGLETON, LARRY J.  
403 West 300 South  
American Fork, UT 84003

DOB: 08-31-54

Defendant.

INFORMATION

Citation No. D329581

Case No. 005100338

The undersigned states on information and belief that the Defendant committed the crime of **DRIVING UNDER THE INFLUENCE OF ALCOHOL**, a Class "B" Misdemeanor, in American Fork City, Utah County, on January 30, 2000,, in violation of Section 41-6-44 of the Ordinances of American Fork City.

The act of Defendant constituting the crime was that the Defendant did operate or was in actual physical control of a vehicle at a time when the Defendant's blood or breath alcohol concentration was .08 grams or greater or at a time when the Defendant was under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree which rendered the Defendant incapable of safely operating a vehicle.

This information is based on evidence obtained from the following witnesses: Officer Lisa Shelby.

  
AMERICAN FORK CITY PROSECUTOR

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AMERICAN FORK, UTAH

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NOALL T. WOOTTON -- #3554  
Attorney for Defendant  
8 North Center Street  
P.O. Box 727  
American Fork, Utah 84003-0727  
Telephone: (801) 756-3576  
Facsimile: (801) 756-3578

IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH  
UTAH COUNTY, AMERICAN FORK DEPARTMENT

---

AMERICAN FORK CITY,	:	DEFENDANT'S MOTION
	:	TO SUPPRESS
Plaintiff,	:	
	:	
vs.	:	
	:	
LARRY J. SINGLETON,	:	Case No. 005100338 MD
	:	
Defendant.	:	

---

Defendant respectfully moves the court pursuant to Rule 12 of the Utah Rules of Criminal Procedure, Amendments 4 and 5 of the United States Constitution and Article I, Sections 7 and 14 of the Constitution of Utah, to suppress all evidence obtained subsequent to the arrest of the defendant at his home on charges of Obstructing Justice.

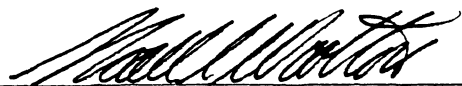
The motion is based upon the following facts:

No crime was committed in the presence of the arresting officer; and

There was no probable cause to believe that the crime for which the arrest was made had been committed.

Noall T. Wootton  
Attorney at Law  
P.O. Box 727 • 8 North Center  
American Fork, Utah 84003  
Telephone (801) 756-3576

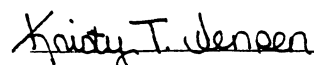
This motion is supported by the attached statement of points and authorities  
Defendant requests an evidentiary hearing and oral arguments.  
Dated this 28th day of March, 2000.

  
\_\_\_\_\_  
NOALL T. WOOTTON  
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 9th day of March, 2000, a true and accurate copy  
of the foregoing DEFENDANT'S MOTION TO SUPPRESS was mailed first class, postage  
prepaid, to the following:

James "Tucker" Hansen  
DUVAL, HANSEN, WITT & MORLEY  
306 West Main Street  
American Fork, UT 84003

  
\_\_\_\_\_

RECEIVED  
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AMERICAN FORK, UTAH  
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NOALL T. WOOTTON -- #3554  
Attorney for Defendant  
8 North Center Street  
P.O. Box 727  
American Fork, Utah 84003-0727  
Telephone: (801) 756-3576  
Facsimile: (801) 756-3578

**IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH**  
**UTAH COUNTY, AMERICAN FORK DEPARTMENT**

---

AMERICAN FORK CITY,	:	STATEMENT OF POINTS AND
	:	AUTHORITIES IN SUPPORT OF
Plaintiff,	:	DEFENDANT'S MOTION
	:	TO SUPPRESS
vs.	:	
LARRY J. SINGLETON,	:	Case No. 005100338 MD
Defendant.	:	

---

Defendant submits the following statement of points and authorities in support of his pending motion to suppress.

**FACTS**

For purposes of this statement, the Defendant relies on the narrative portions of the written report of investigating officer Lee Southard of the American Fork City Police Department. That portion of his report is attached to this memorandum. It was received from the Office of the City Prosecutor pursuant to Defendant's request. For purposes of his Motion to Suppress, Defendant will stipulate to the relevant facts as therein set forth.

1  
2  
3 On January 30, 2000 at approximately 9:30 p.m. the Defendant was arrested by  
4 Officer Lee Southard of the American Fork City Police Department. The arrest took place inside  
5 the Defendant's home at 403 West 300 South in American Fork City. At that time and place the  
6 Defendant was charged with the offense of Obstructing Justice. Immediately prior to the arrest,  
7 Officer Southard had been invited by the Defendant into his home where he was advised by the  
8 officer that he had been identified as the driver of a vehicle parked outside the house and that he  
9 was suspected of doing so while under the influence of alcohol. The officer detected what he  
10 believed to be a "strong odor of alcohol" coming from the Defendant's breath and asked the  
11 Defendant to submit to a series of field sobriety tests. The Defendant voiced his refusal to  
12 submit to any such field tests and declined to cooperate when one was attempted. Officer  
13 Southard was then invited by the Defendant to leave his house. That invitation was declined.  
14 The Defendant was instead advised he would be arrested for Obstructing Justice if he didn't  
15 cooperate. The Defendant responded with a renewal of his request that the Officer leave his  
16 home whereupon he was placed under arrest for the offense of obstructing justice. Defendant  
17 was then handcuffed, taken into custody, and transported from his home to the American Fork  
18 City police station.  
19  
20

21 While in custody the Defendant was again directed to submit to a series of field  
22 tests at the police station. Tests were performed at that time and place. Following their  
23 completion the Defendant was advised that he was now under arrest for driving under the  
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3 influence of alcohol and an intoxilyzer test was requested and performed. It is the results of this  
4 test and the results of the field sobriety tests performed at the police station that the Defendant  
5 seeks to suppress.

### 6 **POINTS**

7  
8 1. Refusal to submit to field sobriety tests does not constitute the offense of  
9 Obstructing Justice.

10 2. At the time the Defendant was placed under arrest for Obstructing Justice, he  
11 was not engaged in the commission of any crime nor was there probable cause to believe that he  
12 had committed a crime for which a lawful arrest for anything could be justified.

13 3. Evidence obtained incident to or resulting from the invalid arrest of the  
14 Defendant is inadmissible.

### 15 **AUTHORITIES**

16  
17 *State v. Mendoza*, 748 P.2d 181 (Utah 1987). Where arrest is illegal evidence  
18 obtained as a result thereof is inadmissible.

19 *State v. Larocco*, 794 P.2d 460 (Utah 1990). The appropriate sanction for  
20 illegally obtained evidence is exclusion.

### 21 **ARGUMENT**

22  
23 The offense of Obstructing Justice is set out in §76-8-306 of the Utah Criminal  
24 Code. A copy of the entire section is attached hereto as part of this memorandum. In essence,  
25  
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1  
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3 however, it provides that a person is guilty of an offense if, with the intent to prevent, hinder, or  
4 delay the discovery apprehension, prosecution, conviction, or punishment OF ANOTHER for  
5 the commission of a crime, he commits one or more of the acts enumerated in said statute. The  
6 gravamen of that crime is that the Defendant performs an affirmative act to prevent or hinder the  
7 prosecution, conviction, or punishment of someone other than the Defendant. That statute  
8 clearly is not applicable to the Defendant in this action. Clearly, the offense of Obstructing  
9 Justice was not being committed by the Defendant when he refused Officer Southard's request  
10 for performance of field sobriety tests. He was impeding the officer's ability to establish  
11 probable cause to legitimize a subsequent arrest for driving while under the influence of alcohol,  
12 but such conduct is not a criminal act.  
13

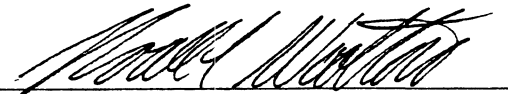
14  
15 That having been said, the case law is replete with authority to the effect that the  
16 appropriate remedy is to not only find that the arrest was invalid, but that any evidence logically  
17 following from it should be declared to be inadmissible. This is not a case of harmless  
18 inadvertence on the part of the arresting officer. It was a deliberate act intended to place the  
19 Defendant in a position of incarceration to which he should not have been subjected based upon  
20 the information the officer had at that time. The *Mendoza* case and the *Larocco* case cited above  
21 are examples of the present status of the case law concerning the inadmissibility of evidence that  
22 has its roots in an arrest that is improper. Probable cause, if any existed, to support the  
23 subsequent arrest for driving while under the influence of alcohol, which in turn gave the officer  
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the right to request an intoxilyzer test, all arose out of the initial arrest for obstructing justice That arrest subjected the Defendant to the in-custody environment in which the subsequent field sobriety tests were performed. They would not have been performed but for that improper arrest Their results and the results of any chemical test that followed must therefore be suppressed if the current law on the subject is to be followed.

In summary, it is submitted that the offense of Obstructing Justice did not occur, nor did the arresting officer have probable cause to believe that it had Thus, the Defendant's arrest for the same was invalid and any evidence in the nature of field sobriety tests performed after that arrest as well as the intoxilyzer test result should be suppressed.

Dated this 24th day of March, 2000.

  
NOALL T WOOTTON  
Attorney for Defendant

///  
///  
///

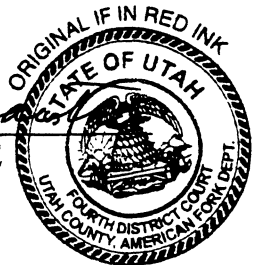
In The Fourth District Court, State of Utah  
Utah County, American Fork Department

AMERICAN FORK CITY,	Plaintiff,	RULING ON DEFENDANT'S MOTION TO SUPPRESS
vs		
LARRY J. SINGLETON,	Defendant,	Case # 005100338

Defendant's Motion to Suppress is denied. The prosecutor is to prepare the appropriate order.

DATED: June 14, 2000

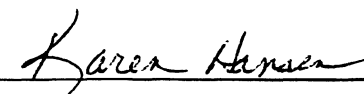
  
DISTRICT COURT JUDGE



MAILING CERTIFICATE

The undersigned does hereby certify that a true and accurate copy of the foregoing Ruling was mailed to the following, postage pre-paid, this 15th day of June, 2000.

Bruce Murdock, 306 W. Main, American Fork, Utah 84003  
Noall T. Wootton, PO Box 727, American Fork, Utah 84003

  
Clerk

FILED IN  
4TH DISTRICT COURT  
AMERICAN FORK DEPT  
STATE OF UTAH  
AMERICAN FORK CITY

2001 JAN 26 A 8:45

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3 NOALL T. WOOTTON -- #3554  
4 Attorney for Defendant  
5 8 North Center Street  
6 P.O. Box 727  
7 American Fork, Utah 84003-0727  
8 Telephone: (801) 756-3576  
9 Facsimile: (801) 756-3578

10 **IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH**

11 **UTAH COUNTY, AMERICAN FORK DEPARTMENT**

12 AMERICAN FORK CITY, : **CONDITIONAL PLEA AGREEMENT**

13 Plaintiff, :

14 vs. :

15 LARRY J. SINGLETON, : Case No. 005100338 MD

16 Defendant. : Judge Howard H. Maetani

17 American Fork City, Plaintiff, through James "Tucker" Hansen, its attorney, and  
18 the Defendant, Larry J. Singleton, and Noall T. Wootton, his attorney of record, hereby stipulate  
19 and agree as follows:

20 This stipulation is entered into pursuant to the authorization of *State v. Sery*, 758  
21 P.2d 935, (Utah Ct. App., 1988).

22 The Defendant is charged with driving under the influence of alcohol, a Class B  
23 misdemeanor, in American Fork City, Utah County, on January 30, 2000, in violation of §41-6-  
24 44 of the Ordinances of American Fork City.  
25  
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Noall T. Wootton  
Attorney at Law  
P.O. Box 727 • 8 North Center  
American Fork, Utah 84003  
Telephone (801) 756-3576

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On March 7, 2000 the Defendant filed his Motion to Suppress all evidence obtained subsequent to the arrest of the Defendant at his home on charges of obstructing justice.

Having received evidence in support of the Defendant's Motion to Suppress and having reviewed the memoranda of the parties, this Court issued its ruling on June 14, 2000 denying the Defendant's Motion to Suppress.

Pursuant to the Court's ruling, the parties hereby specifically agree as follows:

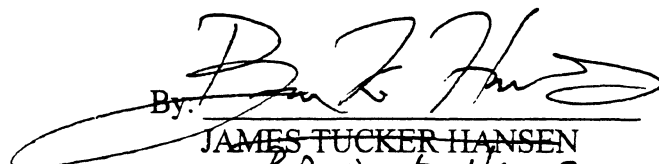
a. The Defendant shall tender his plea of guilty/no contest to one count of driving while under the influence of alcohol, a Class B misdemeanor, as charged in the Information.

b. The Defendant shall be allowed to preserve his right of appeal in order to present his challenge to the admissibility of the evidence as outlined in his Motion to Suppress.


c. The City agrees that if the Defendant's arguments in favor of suppression are accepted by the appellate court, the City will not oppose the Defendant's motion to withdraw his above-noted plea.


Dated this 24 day of January, 2001.

AMERICAN FORK CITY

By:   
JAMES TUCKER HANSEN  
BRADY K. HANSEN

Dated this 22<sup>nd</sup> day of January, 2001.

  
LARRY J. SINGLETON  
Defendant

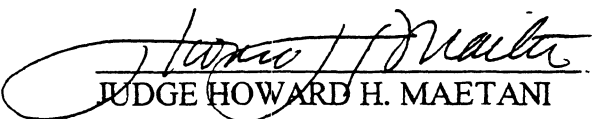
  
NOALL T. WOOTTON  
Attorney for Defendant

**APPROVAL OF "SERY" PLEA**

Upon the foregoing stipulation of the parties and good cause appearing, this Court hereby approves the agreement of the parties and orders that the Defendant's plea entered in this matter shall be conditioned on the preservation of his right to appeal this Court's denial of his Motion to Suppress and shall be further conditioned on Defendant's preserving his right to withdraw such plea should his arguments in favor of the suppression be accepted by the appropriate appellate court.

DATED this 24 day of January, 2001.

BY THE COURT:

  
JUDGE HOWARD H. MAETANI  
Fourth District Court

4TH DISTRICT CT - AF DEPT COURT  
UTAH COUNTY, STATE OF UTAH

---

AMERICAN FORK CITY,	:	MINUTES
Plaintiff,	:	SENTENCE, JUDGMENT, COMMITMENT
	:	
	:	
vs.	:	Case No: 005100338 MD
	:	
LARRY J SINGLETON,	:	Judge: HOWARD H. MAETANI
Defendant.	:	Date: August 1, 2001

---

PRESENT

Clerk: jilll

Prosecutor: ANDERSON, BRETT C

Defendant

Defendant's Attorney(s): WOOTTON, NOALL T.

DEFENDANT INFORMATION

Date of birth: August 31, 1954

Audio

Tape Number: 0189 Tape Count: 1940

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - Class B Misdemeanor

SENTENCE JAIL

Based on the defendant's conviction of DRIVING UNDER THE INFLUENCE OF ALC/DRUGS a Class B Misdemeanor, the defendant is sentenced to a term of 180 day(s) The total time suspended for this charge is 170 day(s).

Case No: 005100338  
Date: Aug 01, 2001

---

SENTENCE JAIL SUSPENDED NOTE

10 DAYS JAIL STAYED IF DEFENDANT COMPLIES.

SENTENCE FINE

Charge # 1            Fine: \$1000.00  
                      Suspended: \$200.00  
                      Surcharge: \$674.05  
                      Due: \$1474.05

                      Total Fine: \$1000.00  
                      Total Suspended: \$200.00  
                      Total Surcharge: \$674.05  
                      Total Principal Due: \$1474.05  
                                  Plus Interest

The fine is to be paid in full by 08/01/2004.

ORDER OF PROBATION

The defendant is placed on probation for 3 year(s).  
Probation is to be supervised by DISTRICT COURT.  
Defendant to serve 10 day(s) jail.

Defendant is to pay a fine of 1474.05 where the surcharge has been  
added to the fine. Interest may increase the final amount due.  
Pay fine on or before August 1, 2004.  
Pay fine to The Court.

PROBATION CONDITIONS

KEEP COURT ADVISED OF CURRENT MAILING ADDRESS & AGREE TO SERVICE BY  
MAIL. DEFENDANT WAIVES SERVICE BY ANY OTHER MEANS.  
DEFENDANT IS TO APPEAR IN COURT WHENEVER GIVEN NOTICE BY MAIL OR  
OTHERWISE DIRECTED BY THE COURT TO DO SO.  
DEFENDANT SHALL NOT VIOLATE ANY FEDERAL, STATE, OR MUNICIPAL LAW  
REPORT TO HUMAN SERVICES, 100 E. CENTER, SUITE L 600, PROVO, UTAH,  
370-8427 WITHIN 10 DAYS AND MAKE AN APPOINTMENT TO HAVE AN ALCOHOL  
OR SUBSTANCE ABUSE EVALUATION, & PAY THE COST(S). COMPLETE ANY  
RECOMMENDED TREATMENT.  
DEFENDANT TO INSTALL IGNITION INTERLOCK SYSTEM WITHIN 30 DAYS & IS  
RESPONSIBLE FOR COSTS. PROVIDE PROOF TO COURT THAT DEVICE WAS

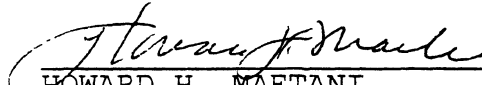


Case No: 005100338  
Date: Aug 01, 2001

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INSTALLED WITHIN 30 DAYS. DEFENDANT MUST SUBMIT DRIVERS LICENSE TO DRIVERS LICENSE DIVISION FOR A RESTRICTION CODE. DEFENDANT MUST NOT TAMPER IN ANYWAY WITH THE DEVICE. BAC TO BE SET AT .025 AND IS TO BE MONITORED EVERY 3 MONTHS BY VENDOR. VENDOR TO OBTAIN THE VEHICLE IDENTIFICATION NUMBER (VIN) FROM VEHICLE & REPORT THAT INFO TO THE COURT.

Dated this 1 day of August, 20 01.

  
\_\_\_\_\_  
HOWARD H. MAETANI  
District Court Judge

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 005100338 by the method and on the date specified.

METHOD NAME

Mail	LARRY J SINGLETON DEFENDANT 403 W 300 S American Fork, UT 84003
Mail	BRETT ANDERSON ATTORNEY PLA 306 W MAIN AMERICAN FORK UT 84003
Mail	NOALL T. WOOTTON ATTORNEY DEF 8 NORTH CENTER STREET PO BOX 727 AMERICAN FORK UT 84003-0727

Dated this 1 day of August, 2001.

*Julie L. Wootton*

\_\_\_\_\_  
Deputy Court Clerk

CLERK OF COURT  
AMERICAN FORK DEPT  
STATE OF UTAH  
JULY 2001  
2001 AUG -2 P 1:23

NOALL T. WOOTTON -- #3554  
Attorney for Defendant  
8 North Center Street  
P.O. Box 727  
American Fork, Utah 84003-0727  
Telephone: (801) 756-3576  
Facsimile: (801) 756-3578

IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH  
UTAH COUNTY, AMERICAN FORK DEPARTMENT

AMERICAN FORK CITY, : NOTICE OF APPEAL  
Plaintiff, :  
vs. :  
LARRY J. SINGLETON, : Case No. 005100338  
Defendant. :

Notice is hereby given that the Defendant, Larry J. Singleton, appeals to the Utah Supreme Court the final judgment and sentence of the above entitled court adjudging him guilty of violating the provisions of 41-6-44 of the Ordinances of American Fork City which judgment was entered January 24, 2001. Sentence was pronounced August 1, 2001.

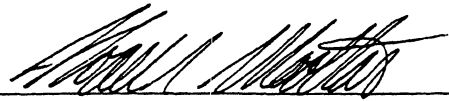
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3 The appeal is taken from the whole of said judgment that was entered pursuant to  
4 a Conditional Plea agreement.

5 Dated this 1st day of August, 2001.

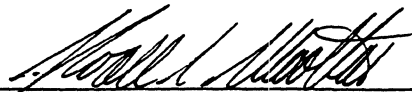
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8 NOALL T. WOOTTON  
9 Attorney for Defendant

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11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on the 1st day of August, 2001, I caused the foregoing  
13 NOTICE OF APPEAL to be duly served upon the following parties by the service method indicated  
14 below.

15 James "Tucker" Hansen  
16 DUVAL, HANSEN, WITT & MORLEY  
17 306 West Main Street  
18 American Fork, UT 84003

[ ] U.S. Mail  
[ ☒ ] Hand Delivery  
[ ] Fax.  
[ ] Other: [Specify]

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CLERK OF COURT  
JUN 5 2003  
2003 JUN -5 P 4:20

NOALL T. WOOTTON -- #3554  
Attorney for Defendant  
8 North Center Street  
P.O. Box 727  
American Fork, Utah 84003-0727  
Telephone: (801) 756-3576  
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**IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH**

**UTAH COUNTY, AMERICAN FORK DEPARTMENT**

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AMERICAN FORK CITY,	:	NOTICE OF APPEAL
Plaintiff,	:	
vs.	:	
LARRY J. SINGLETON,	:	Case No. 005100338
Defendant.	:	

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Notice is hereby given that the Defendant, Larry J. Singleton, appeals to the Utah Supreme Court the final judgment and sentence of the above entitled court adjudging him guilty of violating the provisions of 41-6-44 of the Ordinances of American Fork City which judgment was entered January 24, 2001. Sentence was pronounced August 1, 2001.

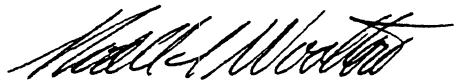
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The appeal is taken from the whole of said judgment that was entered pursuant to a Conditional Plea agreement.

Dated this 5<sup>th</sup> day of June , 2003.

  
\_\_\_\_\_  
NOALL T. WOOTTON  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 5<sup>th</sup> day of June, 2003, I caused the foregoing **NOTICE OF APPEAL** to be duly served upon the following parties by the service method indicated below.

James "Tucker" Hansen  
DUVAL, HANSEN, WITT & MORLEY  
306 West Main Street  
American Fork, UT 84003

☒ U.S. Mail  
☐ Hand Delivery  
☒ Fax:  
☐ Other: [Specify]

  
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**IN THE FOURTH DISTRICT COURT IN AND FOR THE STATE OF UTAH**  
**UTAH COUNTY, AMERICAN FORK DEPARTMENT**

---

AMERICAN FORK CITY, : NOTICE OF APPEAL  
Plaintiff, :  
vs. :  
LARRY J. SINGLETON, : Case No. 005100338  
Defendant. :

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Notice is hereby given that the Defendant, Larry J. Singleton, appeals to the Utah Supreme Court the final judgment of the above entitled court adjudging him guilty of violating the provisions of 41-6-44 of the Ordinances of American Fork City which judgment was entered January 24,2001.

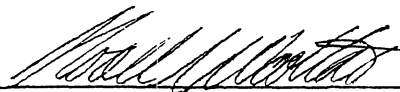
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**Noall T. Wootton**  
Attorney at Law  
P.O. Box 727 • 8 North Center  
American Fork, Utah 84003  
Telephone (801) 756-3576

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The appeal is taken from the whole of said judgment that was entered pursuant to a Conditional Plea agreement.

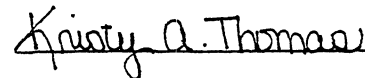
Dated this 26th day of January, 2001.

  
\_\_\_\_\_  
NOALL T. WOOTTON  
Attorney for Defendant

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of January, 2001, a true and accurate copy of the foregoing NOTICE OF APPEAL was mailed first class, postage prepaid, to the following

James "Tucker" Hansen  
DUVAL, HANSEN, WITT & MORLEY  
306 West Main Street  
American Fork, UT 84003

  
\_\_\_\_\_